

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

**O.A.NO.4055 OF 2012**

**New Delhi, this the 9<sup>th</sup> day of September, 2015**

**CORAM:**

**HON'BLE SHRI SUDHIR KUMAR, ADMINISTRATIVE MEMBER  
&  
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

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V.Praveen,  
s/o late R.Vasudevan,  
R/o SB-301, Block 9-B,  
Hudo Place,  
Andrews Ganj,  
New Delhi 110049                      í í í ..                      Applicant

(By Advocate: Mr.Ayushya Kumar)

Vs.

1. Union Public Service Commission,  
Through its Chairman,  
Dholpur House,  
Shajahan Road,  
New Delhi 110003
2. The Secretary,  
Ministry of Finance,  
Department of Revenue,  
Room No.85, North Block,  
New Delhi
3. The Director of Enforcement,  
Enforcement Directorate,  
Lok Nayak Bhawan,  
6<sup>th</sup> Floor Khan Market,

New Delhi 110003

4. Department of Personnel & Training,  
Through the Secretary,  
North Block,  
New Delhi

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Respondents

(By Advocates: Mr. Rajinder Nischal for R-1 (UPSC) &  
Mr.P.K.Singh for Mr.Rajeev Kumar for Respondents 2, 3 &  
4)

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### **ORDER**

#### **RAJ VIR SHARMA, MEMBER(J):**

The applicant has filed the present Original Application seeking the following reliefs:

- õi) Call for the original records of the case from the Respondents; and
- ii) direct that consultation with UPSC was not required in the case of the applicant who is a Central Government Group -Aø Officer in terms of DOP&T OM dated 3.10.1989 and direct the Respondents No.2 and 3 to issue appropriate orders on selection of the applicant to the post of Dy. Director of Enforcement on deputation/absorption basis, without taking into consideration the comments/recommendations of the Selection Board constituted by UPSC in the case of the applicant; or  
in the alternative
- iii) pass appropriate orders and hold that the Selection Board constituted by UPSC was not validly constituted and direct the respondents to reconstitute the Selection Board comprising of representatives of SC/ST/OBC categories in terms of DOP&T OM dated 8.1.2007 and 4.6.2010, as also persons having requisite expertise from the concerned field preferably from the Department of Revenue and Directorate of Enforcement to assess the suitability of candidates, and reconsider the case of the applicant in terms of the reservation policy guarantee by the Constitution of India; and
- iv) direct the respondents to issue appointment orders to the applicant for the post of Dy. Director of Enforcement on

- deputation/absorption basis by giving appropriate weightage to applicant's academic qualifications of M.Sc., LL.B, Length of Service, Experience, Trainings, ACRs/APARs, Grade pay and Pay Band (PB-3);
- v) award costs of the application in favour of the applicant; and
  - vi) pass any other or further order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

2. During the arguments, Mr.Ayushya Kumar, learned counsel appearing for the applicant, did not press the applicant's prayer no.(ii), and, therefore, the O.A. is confined to his prayer nos. (iii) and (iv), as quoted above.

3. The brief facts of the applicant's case are that after acquiring M.Sc. degree, and degree in Law (LL.B), he joined Intelligence Bureau (IB) under the Ministry of Home Affairs, Government of India, as Junior Intelligence Officer (Grade I). He served the Intelligence Bureau for approximately two years. While working as Junior Intelligence Officer (Grade I), he applied for the post of Food Inspector, Department of Health, Government of Kerala. On being selected by the Kerala Public Service Commission, he resigned from the services of Intelligence Bureau on 30.1.1988 and joined the Department of Health, Government of Kerala, on 1.2.1988 as Food Inspector. He worked under the Government of Kerala in the post of Food Inspector, Mobile Vigilance (Squad Ernakulam). As a Food Inspector, he investigated many cases involving violation of provisions of the Food Adulteration Act. While working as Food Inspector, he applied for the post of Assistant Registrar, Income Tax Appellate Tribunal (Ministry of

Law & Justice, Government of India). On being selected through the Union Public Service Commission, he was relieved on 15.12.1999 from the services of the Department of Health, Government of Kerala, to take up appointment as Assistant Registrar in the Income Tax Appellate Tribunal. Accordingly, he joined as Assistant Registrar in the Income Tax Appellate Tribunal on 20.12.1999. On 21.12.2009, the applicant was granted Grade Pay of Rs.6600/- by way of MACP. As Assistant Registrar in the Income Tax Appellate Tribunal, his duties involve administrative, accounts and quasi-judicial works. Notification No.A.35011/5/2011-Ad.E.D., issued by the Ministry of Finance, Department of Revenue, Government of India, was published in the Employment News dated 17-23 November 2011, inviting applications from eligible officers of All India Services/Central Services/including State Police Organizations/Central Bureau of Investigation, who were willing to be considered for appointment on deputation/absorption basis to the post of Deputy Director of Enforcement in the Directorate of Enforcement, at various Zonal and Sub Zonal Offices. The notification was issued to fill up 47 posts of Deputy Director of Enforcement in Pay Band-3: Rs.15600-39100/- with Grade Pay of Rs.6600/- . In response thereto, the applicant made application. The Ministry of Finance, Department of Revenue, and the Directorate of Enforcement, considered the candidature of the applicant and found him eligible, suitable and fit for appointment to the said post on deputation/absorption basis. Thereafter, the Ministry of Finance (Department of Revenue) sent a proposal, along with a

list of 20 candidates including the applicant, to the Union Public Service Commission. On 10.9.2012 the applicant received a call letter from the Under Secretary, Ministry of Finance (Department of Revenue) informing him that the Union Public Service Commission decided to make selection of suitable officers for appointment to the said post by holding a personal talk on 18<sup>th</sup> and 19<sup>th</sup> September, 2012, at 10.30 A.M., in the office of the UPSC at New Delhi. The applicant attended the personal talk in the office of the UPSC on 19.9.2012. The personal talk was conducted by a three-Member Committee. On 24.9.2012 the applicant came to know that his name was not recommended by the UPSC. Hence, he filed the present O.A.

3. It is contended by the applicant that the Selection Committee of UPSC, which conducted the personal talk with the short-listed candidates on 18<sup>th</sup> and 19<sup>th</sup> September, 2012, was not validly constituted. The Members of the Selection Committee did not have the requisite qualification/expertise to conduct the personal talk. The Selection Committee did not include one member belonging to SC/ST, and one member belonging to minority community, in contravention of the DOP&T O.Ms. dated 8.1.2007 and 4.6.2010. The Selection Committee also did not include an Enforcement Officer of the Directorate of Enforcement. It is also contended by the applicant that the Selection Board did not give due weightage to his academic qualifications of M.Sc. and LL.B, length of service, experience, training, ACR/APARs, and Grade Pay and Pay Band (PB-3). It is also contended by the applicant that no SC/ST/OBC candidate was selected by

the Selection Committee. It is also contended that although 47 posts were advertised, and 20 candidates, including the applicant, were found suitable by the Ministry of Finance (Department of Revenue), the Selection Committee of the UPSC only selected 5 candidates without any rhyme or reason.

4. Opposing the O.A., respondent No.1-UPSC has filed a counter reply. It is stated by the UPSC that Selection Boards/Committees are constituted by it as per Rules, and instructions contained in the DoP&T's O.Ms. dated 8.1.2007 and 4.6.2010 are followed as far as possible within constraints. As per the instructions contained in the O.M. No.16/2/67 Estt.(C), dated 27.9.1967, issued by the Ministry of Home Affairs, the reservations do not apply to posts filled by deputation. The selection for Group 'A' post on deputation is made on the basis of available ACRs, bio data and personal talk; the maximum marks for such SCM(PT) being total 200 marks. The weightage for each of the three items is as follows:

ACR	-	25% weightage or 50 marks
Bio data	-	25% weightage or 50 marks
Personal Talk (PT)	-	50% weightage or 100 marks.

Qualifying standard is the minimum of overall 50% or 100 marks (with 50% or more in the P.T.). It is stated by the UPSC that due weightage is given to various parameters, like, essential qualification, qualifying service, desirable qualification/additional academic qualifications, professional training and work experience over and above the required experience, research publications and reports and special projects, awards/scholarships/official

appreciation, affiliation with the professional bodies/institutions/societies in terms of the instructions issued by the Commission, vide its guidelines dated 26.7.2004. On the basis of available ACRs, bio data and personal talk, five candidates were recommended for appointment to the post of Deputy Director of Enforcement on deputation/absorption basis. As the applicant failed to obtain 50% or more marks in SCM (PT), he was not recommended by the Selection Committee. In this view of the matter, the UPSC prays for dismissal of the O.A.

5. No counter reply has been filed by respondent nos.2, 3 and 4.

6. In his rejoinder reply, the applicant has more or less reiterated same averments as in his O.A.

7. We have perused the records and have heard Mr.Ayushya Kumar, learned counsel appearing for the applicant, and Mr.Rajinder Nischal, learned counsel appearing for respondent no.1-UPSC, and Mr.P.K.Singh for Mr.Rajeev Kumar, learned counsel appearing for respondent nos. 2, 3 and 4.

8. The Department of Personnel & Training's O.Ms. dated 8.1.1987 and 4.6.2010 (*ibid*) provide for inclusion of one member belonging to SC/ST and one member belonging to minority community in the Selection Board/Committee. It is not specifically disputed by respondent no.1-UPSC that the Selection Committee, which conducted the personal talk with the candidates, including the applicant, and assessed their suitability for appointment to the post of Deputy Director of Enforcement on

deputation/absorption basis, did not include one member belonging to SC/ST and one member belonging to minority community. As it transpires from the DoP&T's O.Ms. dated 8.1.1987 and 4.6.2010 (*ibid*), the purpose of including one Member belonging to SC/ST and one member belonging to minority community is to ensure appropriate representation of persons belonging to SC/ST and minority community in Government service. As per the instructions contained in the O.M. No.16/2/67 Estt.(C), dated 27.9.1967, issued by the Ministry of Home Affairs, the reservations do not apply to posts filled by deputation. The applicant admittedly does not belong to SC, ST or minority community. The applicant has not placed before us any material to show that Enforcement Officer of the Directorate of Enforcement should have been one of the Members of the Selection Committee. It is not the case of the applicant that any of the Members of the Selection Committee, which was constituted by the UPSC, acted *mala fide* against him. The UPSC has asserted that Selection Committees/Boards are constituted by it in accordance with the rules/regulations framed by it, and that while constituting Selection Committees/Boards, the instructions contained in the DoP&T's O.Ms. dated 8.1.1987 and 4.6.2010 (*ibid*) are followed as far as possible within constraints. In the above view of the matter, it is unfathomable as to how non-inclusion of one member belonging to SC/ST and one member belonging to minority community in the Selection Committee, as constituted by the UPSC, vitiates the constitution of the Selection Committee. Therefore, we do not find any substance in the



applicant's contention with regard to the validity of constitution of the Selection Committee.

9. We have found that the Selection Committee of the UPSC did not dispute the eligibility of the applicant for appointment to the post of Deputy Director of Enforcement on deputation/absorption basis. The Selection Committee, on the basis of assessment of applicant's ACRs/APARs and bio data, and after holding personal talk with him, did not recommend the applicant for appointment to the post of Deputy Director of Enforcement on deputation/absorption basis, as he could not obtain 50% or more marks in SCM(PT).

10. In **Dalpat Abasaheb Solunke, etc., vs. Dr.B.S.Mahajan, etc.,** AIR 1990 SC 434, the Hon'ble Supreme Court held thus:

“...It is needless to emphasize that it is not the function of the Court to hear appeals over the decisions of the Selection Committee and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection, etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction.”

11. In **Maheshwar Prasad Srivastava & another vs. Suresh Singh and others**, AIR 1976 SC 1404, the Honøble Supreme Court held that the Public Service Commission having the benefit of expert opinion is better situated to judge whether the particular candidate is qualified for a particular post and courts should hesitate to interfere with the discretion of the appointing authority so long as it is exercised *bona fide*.

12. In **Union Public Service Commission vs. L.P.Tiwari and others**, (2007) 1 SCC (L&S) 944, the Honøble Supreme Court observed thus:

öIt is now more or less well settled that the evaluation made by an expert committee should not be easily interfered with by the courts which do not have the necessary expertise to undertake the exercise that is necessary for the purpose.ö

13. Having considered the facts and circumstances of the present case in the light of the above decisions of the Honøble Supreme Court, we are not inclined to accept the contention of the applicant with regard to assessment of his academic qualifications, service records, etc., and his performance during the personal talk, made by the Selection Committee constituted by the UPSC.

14. The other aspect of the matter is that when the applicant appeared before the Selection Committee, which was constituted by the UPSC, without protest, and subsequently found to be unsuccessful, the O.A. filed by him questioning the assessment made by the said Selection Committee and his non-appointment to the post of Deputy Director of Enforcement on deputation/absorption basis on the grounds of improper

constitution of the said Selection Committee or improper assessment of his qualifications, service records, etc., by the said Selection Committee, must fail. This view of ours is fortified by the decisions of the Honøble Supreme Court in **Om Prakash Shukla v. Akhilesh Kumar Shukla**, (1986) Supp.SCC 285; **Madan Lal v. State of J& K**, (1995) 3 SCC 486; and **Dhananjay Mallik & others v. State of Uttaranchal & others**, (2008) 4 SCC 171.

15. In **Om Prakash Shukla's case** (supra), it has been clearly laid down that when a candidate appeared at the examination without protest and subsequently found him to be unsuccessful in the examination, question of entertaining a petition challenging the said examination would not arise.

16. In **Madan Lal's case** (supra), the Honøble Supreme Court, following its earlier decision in **Om Prakash Shukla's case** (supra), held thus:

“9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being concerned respondents herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the concerned Members of the Commission who interviewed the petitioners as well as the concerned contesting respondents. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, that they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process

of interview was unfair or Selection Committee was not properly constituted. In the case of *Om Prakash Shukla v. Akhilesh Kumar Shukla and Ors.*, (AIR 1986 SC 1043), it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.

10. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition, we cannot sit as a Court of appeal and try to reassess the relevant merits of the concerned candidates who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee.

17. In **Dhananjay Mallik's case** (supra), it has been held by the Hon<sup>ble</sup> Apex Court that having unsuccessfully participated in the selection process without any demur, candidates are estopped from challenging the selection criterion, and, therefore, if the applicant had any valid objection, he should have challenged the notice and selection process without or before participating in the selection.

18. The other contention of the applicant is that the Ministry of Finance (Department of Revenue) duly considered his candidature and found him suitable for appointment to the post of Deputy Director of

Enforcement on deputation/absorption basis. But the Ministry of Finance (Department of Revenue) denied him appointment only because of non-recommendation of his case by the UPSC. The recommendation and/or advice given by the UPSC at the stage of consultation, as required under the Recruitment Rules, was not binding on the Ministry of Finance (Department of Revenue). Therefore, the Ministry of Finance (Department of Revenue) ought to have appointed him to the post of Deputy Director of Enforcement on deputation/absorption basis. There can be no controversy over the proposition that advice of the consultant is not binding on the person/authority who seeks the advice. But in the instant case, the Ministry of Finance (Department of Revenue) accepted the advice/recommendation of the UPSC and appointed five candidates to the post of Deputy Director of Enforcement on deputation/absorption basis. The Ministry of Finance (Department of Revenue), in its wisdom, did not think it proper to have further consultation with the UPSC in the matter of appointment of the applicant and others who were not recommended by the UPSC. Thus, it is clear that the Ministry of Finance (Department of Revenue), accepting the recommendation/advice of the UPSC, decided not to appoint the applicant to the post of Deputy Director of Enforcement on deputation/absorption basis. Therefore, we find no substance in the contention of the applicant that the Ministry of Finance (Department of Revenue) having found him suitable for appointment to the post of Deputy Director of Enforcement on deputation/absorption basis, he ought not to have been denied appointment

solely on the recommendation/advice given by the UPSC at the stage of consultation.

19. In the light of our above discussions, we hold that the O.A. being devoid of merit is liable to be dismissed. Accordingly, the O.A. is dismissed. No costs.

**(RAJ VIR SHARMA)**  
**JUDICIAL MEMBER**

**(SUDHIR KUMAR)**  
**ADMINISTRATIVE MEMBER**

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